

EXHIBIT A

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2010 OCT 28 PM 2:21

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: November 9, 2010

RE: **Conduct a Public Hearing and Upon Conclusion Adopt a Resolution Denying Appeal #A10223 and Upholding the Decision of the Planning Commission to Deny Case #CM10131 for a 41'-5"-tall Monopole Wireless Telecommunications Facility in the Open Space Zone section of Public Right-of-Way on Skyline Blvd. North of the Roberts Park Street Entrance**

SUMMARY

On August 4, 2010, the Planning Commission denied an application by NextG Networks ("NextG") for a Major Conditional Use Permit for a Monopole Wireless Telecommunications Facility in an Open Space Zone section of public right-of-way on Skyline Boulevard north of the Roberts Park street entrance (#CM10131). On August 16, 2010, the applicant NextG timely filed an Appeal of the Planning Commission's decision (#A10223). Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. This report describes the Appeal and staff's analysis and recommendation. Staff has attached a Resolution to this report.

FISCAL IMPACT

This is an appeal of a Zoning Application; therefore, there is no fiscal impact. Staff time required to process this appeal is cost-covered through the Appeal fees paid by the appellant.

BACKGROUND

Application

On June 3, 2010, NextG submitted a Major Conditional Use Permit application to the Planning and Zoning Department to construct the new Monopole Wireless Telecommunications Facility. The proposal was to install a 41'-5"-foot tall wooden pole with two (2) panel antennas attached at 33'-5" top height. The pole would be set back approximately ten-feet from the edge of street pavement. The pole would also have accessory equipment attached between 7'-6" and 19'-7" in height. All attachments would be painted to match the color of the wooden pole. The applicant

Item: _____
City Council
November 9, 2010

states that the purpose of the project is to improve cellular telephone reception in the area and that other carriers would be eligible to apply to co-locate on or use the services of the pole. The area consists of woodland (predominantly Redwoods) and a regional park (Roberts Park/East Bay Regional Parks District). Very few man-made structures and no similar facilities exist in the immediate area along Skyline Boulevard north of Joaquin Miller Road. For a more detailed description of this area, see **Attachment D** (Description of Physical Location).

Prior Determination

On March 12, 2010, NextG submitted an incomplete application to CEDA for poles for telecommunications purposes at four sites along Skyline Boulevard. On April 9, 2010 staff sent out a letter and indicated to NextG that the proposed poles were Monopole Wireless Telecommunications Facilities subject to discretionary approvals pursuant to the Planning Code and deemed the applications incomplete. On May 13, 2010 the Zoning Manager issued an administrative interpretation / determination which stated that the erection of these new and independent poles within the public right-of-way intended for Wireless Telecommunications Facilities, as defined, and regulated, by the Oakland Planning Code included the requirement for Conditional Use Permits. (See **Attachment B** for a copy of the zoning manager's determination letter). NextG appealed the determination on the basis that the poles were not Monopoles but rather utility poles and not subject to zoning when located in the public right-of-way. On July 21, 2010 the Planning Commission denied the administrative appeal and upheld the Zoning Manager's determination. A copy of this determination is located at the Planning and Zoning Department located at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland CA 94612. The Planning Commission decision was final and could not be further appealed. The applicant has not challenged the final decision in court.

An application for another site located adjacent to the Chabot Space and Science Center street entrance was denied and appealed. Application for sites adjacent to Marlborough Terrace and generally adjacent to the Sequoia Bayview trailhead have not yet had Planning Commission hearings.

Application Review and Decision

Beginning on June 22, 2010, staff indicated to the applicant in various correspondence that the required legal findings to support the project could not be made because the proposal is not compatible with the surroundings. Staff explained this is because the site is located in an open space zone consisting of woodlands, essentially lacking man-made structures, including but not limited to utility poles, as well as being a regional park that attracts citizens and visitors for appreciation of the natural environment there. Staff then indicated to the applicant their options were therefore to either withdraw the application and request a refund; revise the proposal by, for example, relocating the facility further from the road to conceal it behind trees and redesigning

the facility to further conceal it as best as possible; or move forward to the Planning Commission with a staff recommendation of denial.

On July 26, 2010, staff met with the applicant to discuss the application. Staff reiterated its position including its willingness to support a revised proposal for a concealed facility located away from the public right-of-way. The applicant explained it would not revise its proposal by relocating the proposed facility out of the public rights-of-way due to the fact that the company's model strictly consists of construction within public rights-of-way. Staff advised the applicant that the requirement to locate only within the public right-of-way is artificial and self-imposed; however, in the spirit of working with the applicant to arrive at an acceptable project, staff also expressed willingness to consider a stealth facility such as a light standard containing the facility and located within the public right-of-way. The applicant did not express a desire to revise the proposal and at that time did not request additional time and/or a continuance of the Planning Commission hearing date. Instead, the applicant indicated interest to keep moving forward toward a public hearing with the Planning Commission. This was with the full knowledge that staff could not support the original request and the reasons for staff's position.

On August 4, 2010, the Planning Commission denied the application. As previously stated, staff presented the item and recommended denial because required legal findings could not be made to support the proposal. NextG representatives spoke to the Planning Commission regarding the item and requested a continuance to allow additional time to explore design alternatives within the public right-of-way with staff. The Planning Commission did not grant a continuance and denied the item. The Planning Commission, believing there was no acceptable location within the right-of-way, did indicate to the applicant that a new design and location was welcome for consideration as part of a new application.

On August 16, 2010, Next G Networks timely submitted an Appeal of the Planning Commission's decision to the Planning and Zoning Department.

KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

The Planning Code indicates that for an appeal of a Planning Commission decision on a Conditional Use Permit: *"The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record."* (OMC Sec. 17.134.070). The basis of NextG's appeal of the Planning Commission's denial is that the Oakland Planning Code does not require a Conditional Use Permit for a utility pole and that the applicant was not allowed an opportunity to present a revised proposal. The appeal also indicates that utilities cannot be required to provide screening or be excluded from public right-of-ways, and furthermore, that the denial renders useless preliminary system construction completed in the area.

The appellant's appeal is attached as *Attachment A*. The appellant fails to provide a substantive basis for each of the issues raised as required in the appeal form itself and the Oakland Planning Code. The "supposed" bases for the appeal, as contained in the appeal letter, is shown in bold text below. A staff response follows each point in normal type.

Appellant's Arguments

A) The Planning Commission Decision is Inconsistent with Law

B) Minimization of Visual Impact while Achieving Telecommunications Service Objectives

Issues

1. "NextG had reviewed the OPC, and it does not speak to governing utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way." (p. 4)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 classified the facility as a Monopole, not a utility pole as the appellant continuously asserts. The Planning Commission upheld the Zoning Manager's determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

For further explanation of this non-appealable issue, see Staff's Response under Section 2 of the July 21, 2010 Staff Report attached hereto as *Attachment C*.

Further, as a stand-alone structure being built to support only telecommunications-related equipment, the structure is not considered a utility pole.

2. "As drafted, the Planning Code contemplates private property and becomes nonsensical when applied to the public right-of-way." (p. 4)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010, stated that the Oakland Planning Code does apply to public property and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, as stated in the staff report to the Planning Commission on the applicant's appeal of the Zoning Manager's determination, the

Item: _____
City Council
November 9, 2010

Planning Code applies to both public and private property in accordance with the following section:

Applicability of zoning regulations.

To Which Property Applicable. The zoning regulations shall apply, to the extent permissible under other laws, to all property within the city of Oakland, and to property outside Oakland to the extent provided in subsection B of this section, regardless of whether such property is in *private or public* ownership. (OMC Sec. 17.07.040(A))(emphasis added)

For further explanation of this non-appealable issue, see Staff's Response under Section 1 of the July 21, 2010 Staff Report attached hereto as *Attachment C*.

3. "NextG had reviewed the OPC, and it does not speak to governing utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way." (p. 4)

Staff Response:

The City does not prohibit telecommunications facilities in the public rights-of-way. As an example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit and Design Review for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission.

As stated above, the City has the right to exercise reasonable control as to the time place and manner in which the rights of way are accessed and used. (Pub. Util. Code sec. 7901.1) The Ninth Circuit Court of Appeal has held that the city may consider aesthetics with respect to the siting of wireless facilities. *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 725 (9th cir. 2009) Here, the Planning Commission denied this particular application for a telecommunications facility in the public right-of-way solely because of aesthetic concerns. The City is open to other design suggestions as well as other locations, but the applicant refused to work with the City in the months leading up to the hearing on the applicant's Major CUP.

4. "Since the City's code does not require CUPs for other users of the public rights-of-way, the City cannot arbitrarily create new criteria just to fit NextG." (p. 4)

Staff Response:

The appellant's assertion is not relevant. The Zoning Manager's determination dated May 13, 2010 classified the facility as a telecommunications facility and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision.

By way of explanation and without re-opening this issue, the City regulates all companies constructing facilities for purpose of wireless telecommunications in the same manner. As a matter of fact, the Planning Commission often rules on applications for Wireless Telecommunications Facilities, including new facilities located within the public rights-of-way, consistent with their authority granted under the OPC. As an example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit and Design Review for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission. Neither AT&T nor T-Mobile has challenged the applicability of the Planning Code in relation to these projects. The applicant has failed to demonstrate why they should be treated differently from other wireless telecommunications providers especially since the facilities that they desire to erect are the same or similar to those of other providers.

For further explanation of this non-appealable issue, see Staff's Response under Section 4 of the July 21, 2010 Staff Report attached hereto as *Attachment C*.

5. "The staff report for the above referenced case mischaracterized NextG as acting "for Verizon" and inaccurately referred to NextG's utility pole as a "monopole" and to the public right-of-way as the "lease areas." (p. 5)

Staff Response:

The appeal is for a NextG facility and is being reviewed as such. The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 stated that the facility desired to be constructed by the applicant is a Monopole Wireless Telecommunications Facility and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, the project is for a facility determined to be a Monopole Wireless Telecommunications Facility by the Zoning Manager on May 13, 2010 and was therefore analyzed subject to the Telecommunications Ordinance (OMC Ch. 17.128). NextG appealed this decision to the Planning Commission on July 21, 2010. The

Item: _____
City Council
November 9, 2010

Planning Commission upheld the Zoning Manager's determination and such decision is final and non-appealable.

6. "By treating NextG like a wireless carrier, which is (sic) it is not, rather than a regulated CLEC with the same rights and responsibilities as the ILEC and other utility entities, the City violated stated and federal law by managing the public rights-of-way in a discriminatory and unequal manner." (p. 5)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 stated that this application was subject to the City's Telecommunications Ordinance and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, NextG's proposal involved a facility to be constructed for the purposes of wireless telecommunications. The project is therefore subject to City regulations regardless of the company type of the applicant.

NextG has not been exempted from local regulation by the California Public Utility Commission. Staff notes that the Public Utilities Code expressly authorizes a local government to "exercise reasonable control as to the time, place and manner in which roads, highways and waterways are accessed. Pub. Util. Code section 7901.1. The City clearly has time, place and manner control over its rights of ways and facilities in its rights of ways. (see *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 725 (9th cir. 2009) *Williams Commc'ns, LLC, v. City of Riverside*, 114 Cal App.4th 642,648 (2003))

The City's Telecommunications Regulations apply to all wireless facilities. Section 17.128.010 provides that "The purpose and intent of these regulations are to provide a uniform and comprehensive set of standards for the development, location, siting and installation of wireless facilities. These regulations are intended to balance the needs of wireless communications providers, the regulatory functions of the City of Oakland, the mandates of State and Federal law and the potential impacts on the community and neighboring property owners in the design and siting of wireless facilities." It is the type of facility rather than the licensing of the company that desires to erect the facility that is determinative. The City's telecom ordinance regulates Monopoles in the right of ways. See Section 8 below.

7. "Leaving aside the mischaracterization of NextG's proposed installation, screening from the public right-of-way should not be required for utility infrastructure in the public right-of-way because it is in the public right-of-way." (p. 5)

Pursuant to the City's Telecommunications regulations and Design Review criteria wireless telecommunications antennas must be screened to a degree commensurate with their location, surroundings, and potential for adverse visual impacts. See 17.128.080(B) (Design Review Criteria for Monopoles).

All wireless telecommunications facilities are held to the standards set forth in the City's ordinance. This regulatory ordinance assures that there is no unreasonable discrimination among providers of functionally equivalent services and facilities.

Also, see criteria for conditional use permits generally under Planning Code Section 17.134.050(A), cited in the August 4, 2010, staff report which states in part, that the location, size, design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density....to harmful effect upon desirable neighborhood character..and to any other impact of the development. The applicant's design proposal is completely incongruous with the location, design and operating characteristics of this open space area, which does not include any similar structures within 500 radial feet of the applicant's proposed location.

Further, Section 17.134.050(B) requires that the location, design, and site planning of the proposed developmentwill be as attractive as the nature of the use and its location and setting warrant. This was not case with appellant's proposal, which did not take into account the surrounding open space and natural environment as described previously.

Please note that in its original findings for denial under Attachment A of its August 4, 2010, staff report, CEDA based one its findings on 17.134.050(F), but erroneously cited it as 17.134.050(E).

This finding cannot be made: the proposal does not conform to the Intent of the Urban Open Space of the General Plan: *"To identify, enhance and maintain land for parks and open space. Its purpose is to maintain and urban park, schoolyard, and garden system which provides open space for outdoor recreation, psychological and physical well-being, and relief from the urban environment."* or to the following Policies of the General Plan's Open Space, Conservation and Recreation (OSCAR) Element:

POLICY OS-6.1: INTERGOVERNMENTAL COORDINATION

Coordinate Oakland's open space planning with other agencies, including adjacent cities and counties, the Port of Oakland, and the East Bay Regional Park District.

POLICY OS-10.2: MINIMIZING ADVERSE VISUAL IMPACTS

Encourage site planning for new development which minimizes adverse visual impacts and takes advantages of opportunities for new vistas and scenic enhancement.

POLICY OS-10.4: RETENTION OF CITY-OWNED OPEN SPACE IN SCENIC CORRIDORS

Retain City-owned parcels adjacent to Skyline Boulevard, Shepherd Canyon Road, and other scenic roadways to preserve panoramic views, vegetation, and natural character.

The location is along a natural wooded corridor serving as a gateway to City and regional parks and facilities. The area offers relief for citizen and area residents from the built environment. The relatively unspoiled character of the area should be maintained for the continued enjoyment by residents and to maintain the economic viability of facilities to attract regional visitors. Furthermore, the East Bay Regional Park District contacted CEDA about their concerns of such an imposing structure in a scenic open space area,

8. "The Findings of Denial under OPC section 17.128.080(B) also makes it clear that collocation of wireless equipment on existing structures is not feasible in the area requiring coverage because it is "completely lacking such structures." (p. 5)

Staff Response:

There are light standards to the south at the intersection of Joaquin Miller Road and Skyline Boulevard and to the north at the Metropolitan Horsemen's Association building on Skyline Boulevard; there are existing utility poles on Skyline Boulevard north of the Chabot Space and Science Center street entrance.

The applicant has not shown that this is the only location and the only design that will accommodate the applicant's proposed use or that this proposed use is necessary at this site. As noted in this report, the applicant has been unwilling to investigate alternatives that would provide a less intrusive location that would be consistent with the established City policies, including but not limited to the City's General Plan and open space policies. The applicant is encouraged to review and investigate and apply for an alternative location that would be consistent with the City's existing ordinance and policies.

9. "However, this police power must be used reasonably and does not allow municipalities to prohibit access to the public rights-of-way based on visual impact, as the Planning Commission did when it denied NextG's application." (p. 6)

The Design Review and Telecommunications chapters of the Planning Code contains criteria indicating projects must not generate excessive visual impacts, which is part of the aesthetic impacts a city can consider when reviewing the siting of telecommunication facilities. Furthermore, as discussed above, cities have clear authority to regulate the public right of way as to time place and manner and may regulate, including denial of applications, based on aesthetic concerns. Aesthetic concerns are fundamental to the visual fabric of an area. *Sprint PCS Assets*,

LLC v. City of Palos Verdes Estates, 583 F.3d 716, 725 (9th cir. 2009) Here, the location proposed is in an important open space area of the city, which has been protected by numerous city policies, as outlined in the staff report to the Planning commission. The proposed facility is not compatible with the natural environment of the area and there are no similar facilities in that area. The design proposed in NextG's CUP application is incompatible with the open space environment. Next G may propose alternative locations or alternative designs that would not have an adverse visual impact on this open space area.

NextG has not shown that the proposed location is the only feasible location for their facility, nor that their facility is necessary at this location; NextG has not shown that the City's regulation of the right of way by denying the proposed facility at its proposed location is not reasonable.

Further, the proposal involved unshielded antennas. As an example, the project could be redesigned to utilize shielded antennas attached or mounted inside of a new light standard (light pole).

There are various types of monopoles and antennas that may be used, many of which include shielded antennas. The City has the authority to consider aesthetics with respect to the siting of wireless facilities. Shielding, and co-location on light poles are one of several feasible ways to address aesthetics.

Staff notes that the proposed type of facility can be attached to a light pole and screened by enclosing the antenna in a cylinder that looks like the extension of the light pole. NextG has used this type of installation in other places which removed the need for an additional stand-alone monopole. Next G could also investigate alternative locations where poles are already present and co-locate on existing poles, including light poles, street poles, traffic lights and utility poles.

The ancillary equipment necessary for the antennas can also be screened, including placement underground.

10. "NextG requested it be allowed to work with the Planning Commission and planning staff on a solution in the public right-of-way that minimized adverse visual impact, but this request was denied in favor a complete prohibition of critical telecommunications infrastructure in the public right-of-way." (p. 6)

Staff Response:

As stated earlier the city does not prohibit telecommunications facilities in the public rights of way. NextG has not been willing to apply for an alternative location and design that would meet the requirements of the City's regulations.

Item: _____
City Council
November 9, 2010

As described in the BACKGROUND section of this report, on July 26, 2010 staff met with the applicant to discuss the application. Staff reiterated its position including willingness to support a revised proposal for a concealed facility located out of the public right-of-way. When the applicant explained it would not revise its proposal by relocating the proposed facility out of the public right-of-way due to the fact that the company's model strictly consists of construction within public rights-of-way, staff advised the applicant that the requirement to locate only within the public right-of-way is artificial and self-imposed; however, in the spirit of working with the applicant to arrive at an acceptable project, staff also expressed willingness to consider a stealth facility such as a light standard containing the facility and located within the public right-of-way. The applicant did not express a desire to revise the proposal and at that time did not request additional time and/or a continuance of the Planning Commission hearing date even though CEDA indicated to the applicant that they would be recommending denial of their application based on the design proposal, which did not include any alternatives.

Further, the applicant could also have proposed alternative locations in the right of way that are not located in a open space area of regional significance. The proposed location and design is not compatible with the character of the right of way and the open space area, which does not contain any other large poles such as telephone poles or light standards.

To date, NextG has not been willing to consider alternative locations and designs that would be consistent with the City's regulations (see below).

12. "NextG now respectfully requests City Council accept NextG's proposal to work with the City to find a solution in the public right-of-way that minimized visual impact while also meeting NextG's network coverage objectives in this "dead zone." (p. 6)

Staff Response:

The Applicant has provided alternative proposals with their appeal to replace the proposal that was denied (see *Attachment A*). The changes essentially consist of switching pole material from wood to metal, adding illumination, locating related equipment on the ground as cabinets, and locating the pole closer to the street entrance. Staff and the Planning Commission have not reviewed the new alternatives NextG proposed in their appeal. To do so requires submittal of a new application to the Planning and Zoning Department as previously indicated by the Planning Commission.

The Applicant has not provided any evidence that the proposed area is in fact a "dead zone." Further the applicant has not provided any evidence that the proposed location and design is the only way of addressing the asserted "dead zone." NextG, as the applicant has the burden to show the lack of available and technologically feasible alternatives to address a significant gap in coverage. At this point, they have not met their burden. There is no evidence before the City that the current location is necessary to close a significant gap in coverage. In addition, only

FCC-licensed providers may assert a significant gap in coverage. Since NextG is not itself an FCC-licensed wireless provider, it is at best unclear whether NextG can assert a significant gap in coverage on its own behalf. If an FCC-licensed provider were to approach the City asserting a significant gap in coverage in this area, that provider would have to show both the significant gap and that the proposed site was the least intrusive means to close that significant gap. No such showing has been made.

The City is not opposed to a facility necessary to close a significant gap from an FCC-licensed provider so long as the facility is located and designed in the least intrusive manner available to close this gap. First, the provider would have to provide evidence of a significant gap in coverage. Then the provider would have to show that the proposed facility was the least intrusive means of addressing this gap in coverage. The facility would have to meet the required findings for a Conditional Use Permit and Design Review. This might be achieved with an *alternative design and location such as a stealth facility co-located with a new street standard* situated adjacent to a park street entrance. If the provider asserts that it cannot close a significant gap in coverage and still meet the requirements of the City's regulations, the provider would have the burden to prove this and the City could then consider the least intrusive means of closing this significant gap.

However, at this time there has been no showing of a significant gap in service from an FCC-licensed provider or that the proposed monopole, as located and designed is the least intrusive way to close this gap.

ENVIRONMENTAL DETERMINATION

As stated in the Planning Commission report, CEQA statutorily exempts projects which are disapproved (Guidelines Section 15270). Therefore, the City Council's action to uphold the Planning Commission's denial of this application, as recommended in this staff report, is exempt from CEQA.

Staff would note that, given the impacts of the regional park and open space area, the aesthetic concerns and the inconsistencies between the proposed project and the General Plan, as set forth in the Planning Commission's staff report and its determination and in this staff report, should the Council determine that this application should be processed as currently proposed, Staff believes that an initial study under CEQA would be required to determine whether the project has potential significant adverse environmental impacts and what type of environmental review under CEQA is required prior to a consideration of approval of the project that is the subject of this appeal. This review has not occurred because of the staff recommendation for denial and the Planning Commission's determination to deny this application. Analysis under CEQA would be required prior to any further processing for any application for telecommunications facilities, as proposed by this appellant or any other applicant.

SUSTAINABLE OPPORTUNITIES

Economic:

To deny the appeal and disallow construction of a 41'-5" pole might result in the maintained attendance of regional visitors paying fees to visit Roberts Park due to the protection of the natural environment sought by open space enthusiasts.

Environmental:

To deny the appeal and disallow construction of the 41'-5" pole would protect the natural environment in an open space zone.

Social:

To deny the appeal and disallow construction of a 41'-5" pole would protect the experience of citizens including children who live in densely-developed areas of Oakland and rely on the City's open space zone for short respites from the urban environment.

DISABILITY AND SENIOR CITIZEN ACCESS

The appeal or proposed construction would not affect access including to disabled or senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. Staff has attached a Resolution for denial to this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council Adopt a Resolution Denying Appeal #A10223 and Upholding the Decision of the Planning Commission to Deny Case #CM10131 for a 41'-5"-tall Monopole Wireless Telecommunications Facility in the Open Space Zone section of Public Right-of-Way on Skyline Blvd. north of the Roberts Park street entrance.

Respectfully submitted,

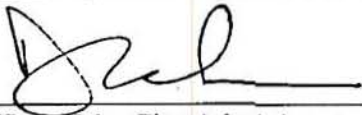


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
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Acting Deputy Director, CEDA

Prepared by:
Aubrey Rose, Planner II
Planning and Zoning Division

FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS

- A. Appeal letter by Ms. Natasha Ernst (legal counsel)/NextG Networks of California submitted August 16, 2010 (contains Exhibit 4. Alternative Design Proposals)
- B. Planning Commission staff report dated August 4, 2010
- C. Planning Commission staff report dated July 21, 2010 (contains Appeal letter by Ms. Natasha Ernst/NextG dated May 24, 2010 and Zoning Manager's administrative determination letter dated May 13, 2010)
- D. Description of Physical Location

Item: _____
City Council
November 9, 2010